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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Appln. of: Richlen et al.

Appln. No.: 10/032,701

Filed: December 28, 2001

For: ABSORBENT GARMENT HAVING A
WEAKENED REGION

Examiner: Reichle, Karin M.

Art Unit: 3761

Attorney Docket No: 659-920

Client Ref. No.: 17595

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL

Sir:

Attached is/are:

- ☒ Appellants' Reply Brief
☒ Return Receipt Postcard.

Fee calculation:

- ☒ No additional fee is required.
☐ Small Entity.
☐ An extension fee in an amount of \$_____ for a _____-month extension of time under 37 C.F.R. § 1.136(a).
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					Small Entity			Not a Small Entity		
	Claims Remaining After Amendment		Highest No. Previously Paid For	Present Extra		Rate	Add'l Fee	or	Rate	Add'l Fee
Total		Minus				x \$25=			x \$50=	
Indep.		Minus				X100=			x \$200=	
First Presentation of Multiple Dep. Claim						+\$180=			+ \$360=	
						Total	\$		Total	\$

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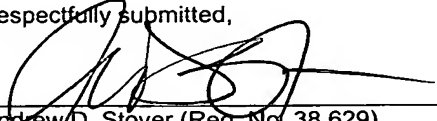
- ☐ A check in the amount of \$_____ is enclosed.
☐ Please charge Deposit Account No. 23-1925 in the amount of \$_____. A copy of this Transmittal is enclosed for this purpose.
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- ☒ The Director is hereby authorized to charge payment of any additional filing fees required under 37 CFR § 1.16 and any patent application processing fees under 37 CFR § 1.17 associated with this paper (including any extension fee required to ensure that this paper is timely filed), or to credit any overpayment, to Deposit Account No. 23-1925.

Respectfully submitted,

September 20, 2006
Date


Andrew D. Stover (Reg. No. 38,629)

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Our Case No. 659/920
K-C Ref. No. 17,595

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Richlen, et al.

Serial No.: 10/032,701

Filing Date: December 28, 2001

For: **ABSORBENT GARMENT HAVING
A WEAKENED REGION**

Examiner: Reichle, Karin M.

Group Art Unit No.: 3761

APPELLANTS' REPLY BRIEF

MS APPEAL BRIEF - PATENTS
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Pursuant to 37 CFR 41.41 and in response to the Examiner's Answer mailed July 21, 2006, Applicants respectfully request entry of the present Reply Brief. Applicants note with appreciation that the Examiner has withdrawn the assertion that claims 11-13, 15, 17-20, 31-

34, 36-40 and 46 are obvious over GB 2 267 024 A to Igaue when viewing certain claim recitations as product-by-process limitations (Examiner's Answer at 2).

The Examiner's arguments set forth at pages 3-5 of the Examiner's Answer are identical to those presented in the Final Office Action mailed October 31, 2005. Applicants' responses to those arguments were presented in Applicants' Revised Appellant's Brief ("Applicants' Brief"), and will not be rehashed here. Applicants respectfully disagree with the Examiner's remaining assertions for at least the following reasons. Applicants have duplicated the Examiner's headings for ease of reference.

Ground 1:

Group 1 (Argument A):

Applicants do not understand the Examiner's assertion that Applicants argue tensile strengths with respect to *claim 11*, and the Examiner's reference to pages 7-8 of Applicants' Brief. It is the Examiner who raised the issue of tensile strengths in the Final Office Action (see Office Action at 3 (Igaue teaches all of the "claimed limitations except for the specific tear and tensile strengths")), and even in the Examiner's Answer (see page 6 – referring to "tensile" strength at least three (3) times). In their Brief, Applicants were merely rebutting the Examiner's assertions about tensile strength by stating, in one sentence, that Igaue "fails to disclose or teach the claimed tear and tensile strengths" (Applicants' Brief at 8). The remainder of Applicants' arguments focused on the Examiner's assertion that the tear strength recited in claim 11 is inherent in Igaue.

With respect to the Examiner's arguments about tear strength, Applicants submit that the Examiner is missing the point about inherency. Indeed, the Examiner's assertions continue to *support* Applicant's position that Igaue does not inherently disclose the claimed

tear strengths (Examiner's Answer at 6 ("it is agreed that tear strength depends on many parameters"))).

Applicants also submit that the Examiner has mischaracterized Applicants' statements made in an Amendment filed January 9, 2004 (Examiner's Answer at 6-7), when asserting that *tear strength* depends on the size of the sample and the testing protocol used (Examiner's Answer at 6-7). Rather, those statements had to do with the "*tensile strength*" of Igaue, and were merely pointing out that when the same protocols were being compared (apples to apples), Igaue disclosed *tensile* strengths greater than 6.62 lbf.¹

Instead, as set forth in Applicants' Brief (page 8), Applicants have asserted that "tear strength can depend on many parameters, including for example and without limitation the *type of material and the configuration of the line of weakness*" (emphasis added). As such, it is not enough merely to assert that Igaue discloses similar, or even identical, materials (Examiner's Answer at 4 and 7), since it is the combination of the material and the line of weakness, not just the material, that affect the claimed "tear strength . . . *along the line of weakness*" (see Claim 11). Rather, as acknowledged by the Examiner, Igaue does not disclose that the claimed tear strength along the line of weakness would occur *every time*.

Finally, the fact that the testing protocol is not recited is irrelevant (Examiner's Answer at 7). The body panel of Igaue either exhibits the recited properties, or it does not. Indeed, the Examiner's assertion that Igaue product would satisfy the claimed strengths "*at the very least* according to some testing protocol" necessarily implies that the product *would not* meet the recitations under some other protocol, thereby precluding any argument about

¹ Ironically, this further evidences that it is the Examiner who continues to mix "tensile" and "tear" strengths, not the Applicants as asserted in the Examiner's Answer (page 6). Indeed, the Examiner refers to "tensile" strength throughout her Argument A (see page 6, last four lines).

inherency, which requires that something necessarily exist in all instances. Moreover, while Applicants have provided a specific testing protocol in the Specification, the Examiner has never asserted, and properly so, that such a protocol is required to be recited in claim 11, or that the claims are unclear or indefinite without the recitation of such a protocol.

Group 1 (Argument B):

Although not entirely clear, the Examiner appears to assert that Applicants are arguing that claim 11 is patentable on the basis of “tensile strength,” which is not recited in the claim (Examiner’s Answer at 7-8). That assertion again misses the point.

In particular, Applicants merely pointed out that Igaue did not disclose any information about the strength (*tensile or tear*) of the *cutting lines* 9b of Igaue, but rather referred to the bond (*tensile*) strength of the *bond lines* 8 (Applicants’ Brief at 8-9). Applicants then further explained that Igaue also did not provide any suggestion about a correlation between the bond strength and the *tear* strength across the cutting lines (*Id.*). As such, any disclosure about strengths (in this case bond/tensile strength) of the bond line 8 in Igaue is completely removed from the tear strength of the cutting line 9b in Igaue.

Faced with this reality, the Examiner resorts to merely asserting that “the tear strength has to be that which allows it to function as disclosed” (Examiner’s Answer at 8). Since Igaue is silent as to what tear strength allows the body panel to be separated along the cutting line, such circular reasoning is not helpful.

Moreover, Applicants have provided arguments concerning the unexpected results of providing a low tear strength line of weakness (Appellants’ Brief at 9), e.g., an easily breakable web that can be sustained throughout the manufacturing process by way of an additional fastener member crossing the line. Throughout the prosecution, the Examiner has

not rebutted such arguments, but instead resorts to the assertion that having a fastener is not recited in the claims. That misses the point – Applicants are not arguing that claim 11 differentiates on the basis of a fastener member, but rather that it is unexpected to achieve such low tear values due to the challenges of the manufacturing process.

For these reasons, the Examiner’s rejections should be withdrawn and claims 11-13, 15, 17-20, 31-34, 36-40 and 46 passed to allowance.

Group 2:

At the outset, it is important to note that claims 14 and 45 both depend from claim 11 and are therefore patentable for the reasons set forth above.

Moreover, with respect to claim 14, as noted in Appellants’ Brief, and according to the Examiner, Igaue teaches making the *bond*, i.e., tensile strength of the *cutting lines* at least or greater than 6.62 lbf, while claim 11 recites *less than about* 6.62 lbf. Accordingly, even with the recitation of “about,” claim 14 further differentiates over Igaue.

That said, the Examiner completely ignores claim 45, which recites a “tensile strength of less than about 5 *lbf* across the line of weakness.” Since the Examiner has not presented any argument or evidence that Igaue discloses such a tensile strength, and in fact Igaue expressly teaches against such a tensile strength (see *Igaue* at 6, bonding strength of the bonds 8 “preferably should be 1000 g/inch [6.62 lbf] or higher”), claim 45 should be allowed on this basis alone.

Group 3:


As noted in Appellants’ brief, Applicants argued the patentability of claims 16 and 35 separately only to the extent that the recitation of having fastener members crossing the line of weakness was relevant to the argument concerning the unexpected results of having low

tear values across a line of weakness. Again, the Examiner is improperly rebutting Applicants' arguments concerning unexpected results by asserting that various limitations are not in the claims. That misses the point as noted above.

Conclusion:

In summary, Igaue does not inherently disclose or make obvious the inventions defined by the present claims. Accordingly, Appellants submit that the present inventions are fully patentable over the cited references, and the Examiner's rejections should be REVERSED.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'AS', is written over a horizontal line.

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